IN THE SUPREME COURT OF THE STATE OF DELAWARE

MIROSLAVA BIHAC,	§	
	§	No. 657, 2011
Appellant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
FAMILY MEDICAL ASSOCIATES,	§	
	§	
Appellee Below,	§	C.A. No. N10A-03-012
Appellee.	§	

Submitted: January 18, 2012
Decided: April 9, 2012

Before **STEELE,** Chief Justice, **HOLLAND** and **RIDGELY,** Justices.

O R D E R

This 9th day of April 2012, upon consideration of the appellant's opening brief and the appellee's motion to affirm, it appears to the Court that:

(1) The appellant, Miroslava Bihac ("Bihac"), was employed part-time by the appellee, Family Medical Associates ("FMA"), until December 8, 2008 when she was temporarily laid off. This appeal arises from Bihac's unsuccessful claim for unemployment benefits.

(2) Bihac worked primarily with Dr. Jose Manalo, who also worked part-time. Dr. Manalo occasionally took temporary leaves of absence and when he did, FMA would temporarily lay off Bihac. When this happened, Bihac would apply

for and receive unemployment benefits until Dr. Manalo returned to work, at which time Bihac would also return to work.

(3) Bihac was laid off on December 8, 2008 when Dr. Manalo took a temporary leave of absence. Bihac applied for unemployment benefits on February 5, 2009. In the employer "separation statement" giving the reason for Bihac's unemployment, FMA stated that Bihac had failed to return to work on January 5, 2009.

(4) Under Delaware law, an employee is disqualified from receiving unemployment benefits if the employee voluntarily ends employment without good cause.[1] "Good cause" must arise from the employment and may be established by circumstances such as a substantial reduction in wages or hours or a substantial deviation from the original employment agreement to the detriment of the employee.[2] The burden of demonstrating good cause rests with the employee claiming benefits.[3]

(5) In this case, after reviewing the evidence submitted by Bihac and FMA, a Claims Deputy determined that Bihac was ineligible for unemployment

[1] Del. Code Ann. tit. 19, § 3314(1) (2005 & Supp. 2010) (effective Jan. 3, 2010).
[2] *Unemployment Ins. Appeal Bd. v. Div. of Unemployment Ins.*, 803 A.2d 931, 936 (Del. 2002) (citing *Moore v. Fulton*, 1994 WL 711221, *2 (Del. Super.), *aff'd*, 1995 WL 389765 (Del. Supr.)).
[3] *Unemployment Ins. Appeal Bd. v. Div. of Unemployment Ins.*, 803 A.2d at 936; *accord Longobardi v. UIAB*, 287 A.2d 690, 692 (Del. Super. 1971), *aff'd*, 293 A.2d 295 (Del. 1972).

benefits because she voluntarily left her employment without good cause. Bihac appealed the Claims Deputy's March 4, 2009 determination to an Appeals Referee.

(6) The Appeals Referee conducted a hearing on December 15, 2009. Bihac appeared in person at the hearing. FMA's office manager, Wendy Palmer, appeared by telephone as a representative of FMA as did three witnesses, Dr. Anna Layosa-Magat, Dr. Carlo Magat, and medical assistant, Gloria Wilson, all of whom worked for FMA.

(7) At the hearing before the Appeals Referee, Bihac testified that FMA did not provide her with a date to return to work and did not contact her when Dr. Manalo returned from his leave of absence. Palmer and Dr. Lyosa-Magat testified that Bihac was instructed to return to work on January 5, 2009. Palmer and Wilson testified that Bihac did not answer her phone on January 5 and 6, 2009, when Palmer attempted to contact her.

(8) By decision of December 16, 2009, the Appeals Referee affirmed the Claims Deputy's decision after concluding that Bihac was ineligible for benefits. The Appeals Referee found:

> In the present case, [Bihac] was a part-time worker who was given hours on an "as needed" basis. It is undisputed that on or about December 8, 2008 [Bihac] was told that she would not be needed for a period of time. [Bihac] argues that she was told that her help would not be needed for a 2 month period. [FMA] contends that [Bihac] was expressly directed to return to work on January 5, 2009. Although [her] return date was

> unclear, this tribunal notes that [Bihac] did not believe that she had been terminated. As such, [Bihac] had a duty to at least make an attempt to contact [FMA] to inquire about her return date. However, [Bihac] testified that she did not. Moreover, [Bihac] testified that she left the country for 3 months in March 2009. Under these circumstances, it appears that [Bihac] abandoned her position. Certainly, [FMA] also had a duty and that was to clearly communicate [Bihac's] work schedule. Nevertheless, it should be noted that [unemployment benefits are] provided for those individuals who have become unemployed through no fault of their own and for reasons attributable to work. . . . [T]he circumstances of this case show that [Bihac] contributed to her unemployment by failing to follow-up with her employer and thus abandon[ed] her job.

(9) Bihac appealed the Appeals Referee's decision to the Unemployment Insurance Appeal Board ("the Board"). The Board held a hearing on February 24, 2010. Bihac appeared at the hearing but FMA did not. Notwithstanding her testimony before the Appeals Referee, Bihac testified at the Board hearing that she called FMA in January 2009 and spoke to Palmer about returning to work but was not given an answer. Bihac also testified that she made phone calls to FMA in March 2009 that were not returned.

(10) By decision dated March 19, 2010, the Board affirmed the Appeals Referee's decision. The Board, noting that Bihac testified "that she did in fact attempt to maintain contact with FMA," nonetheless found:

> Based upon the fact that three witnesses testified [before the Appeals Referee] that attempts were made to contact [Bihac] about resuming her Employment and based on

> the fact that [Bihac] did not inform them about her intentions to return to work . . . [Bihac] did in fact abandon her Employment. Because [Bihac] offers no good cause for voluntarily quitting her Employment, she is disqualified from receipt of unemployment benefits under Delaware law.

(11) Bihac appealed the Board's decision to the Superior Court. In the Superior Court, Bihac submitted an opening brief, FMA submitted an answering brief, and Bihac submitted a reply. By memorandum opinion dated November 4, 2011, the Superior Court affirmed the decision after finding that "the Board's holding – that [Bihac] voluntarily quit her job – is supported by substantial evidence and free from legal error."[4] This appeal followed.

(12) This Court has held that the function of the reviewing courts on appeal from an administrative board is to determine whether or not there was substantial competent evidence to support the finding of the Board.[5] The credibility of witnesses, the weight to be given the testimony and any reasonable inferences, are for the Board to determine.[6] The Board's factual findings, if supported by substantial evidence, shall be conclusive, and the jurisdiction of the Court shall be confined to questions of law.[7]

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[4] *Bihac v. Family Med. Assoc.*, 2011 WL 5346092 (Del. Super.).
[5] *Unemployment Ins. Appeal Bd. v. Div. of Unemployment Ins.*, 803 A.2d 931, 936 (Del. 2002).
[6] *Clements v. Diamond State Port Corp.*, 831 A.2d 870, 878, 880 (Del. 2003) (citing *Coleman v. Dep't of Labor*, 288 A.2d 285, 287 (Del. Super. 1972)).
[7] *Id.*

(13) In this case, we have carefully reviewed the record, including the transcripts of the hearings before the Appeals Referee and the Board, and the written decisions of the Claims Deputy, the Appeals Referee, the Board, and the Superior Court. We also have carefully considered the parties' positions on appeal.

(14) The record reflects that the Board was confronted with conflicting testimony as to whether FMA informed Bihac of a date to return to work and whether Bihac and/or FMA each complied with their duty to contact the other. In this case, after reviewing the conflicting testimony, the Board determined that Bihac abandoned her job without good cause. This determination is within the sound discretion of the Board and we conclude, as did the Superior Court in its well-reasoned memorandum opinion of November 4, 2011, that the Board's decision is supported by substantial record evidence and is free from legal error.

NOW, THEREFORE, IT IS ORDERED that the motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice